

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES

FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2008

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

EXECUTIVE SUMMARY

The Federal Mine Safety and Health Review Commission is an independent adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 as amended. Section 113 of that Act establishes the Commission and sets forth its responsibilities. Public Law 109-236, the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) added an additional responsibility to the Commission for resolving disputes between the Secretary of Labor and underground coal operators with respect to the content of the operator's accident response plan or the Secretary's refusal to approve a plan.

Most cases that come before the Commission involve civil penalties proposed by the Department of Labor's Mine Safety and Health Administration (MSHA) against mine operators. The Commission is responsible for addressing whether the alleged violations occurred as well as the appropriateness of proposed penalties. Other types of cases include contests of MSHA orders to close a mine for health or safety reasons, miners' charges of discrimination based on their complaints regarding health or safety, and miners' requests for compensation after being idled by a mine closure order. Unlike most of the cases that come before the Commission, issues of dispute involving accident response plans must be decided on an expedited basis.

The Commission's administrative law judges (ALJs) decide cases at the trial level. The five member Commission provides administrative appellate review. Review of an ALJ decision by the Commission is not automatic but requires the approval of at least two Commissioners. Most of the cases accepted for review are generated from petitions filed by parties adversely affected by an ALJ decision. In addition, the Commission on its own initiative may decide to review a case. An ALJ decision that is not accepted for review becomes a final, non-precedential order of the Commission. Appeals from the Commission's decisions are to the federal circuit courts of appeals.

The Commission is requesting a budget of \$8,096,000 covering 48 FTE for FY 2008. The request includes \$288,000 to support 4 additional FTE and \$77,000 to support a base staff of 44 and to provide for an anticipated 3.1% pay increase for January 08. Any increase costs of Commission operations are being absorbed with the base funding.

During FY 2006, the Commission received more than 3,400 new trial cases, a 40 percent increase over FY 2005 and FY 2006 workload projections.

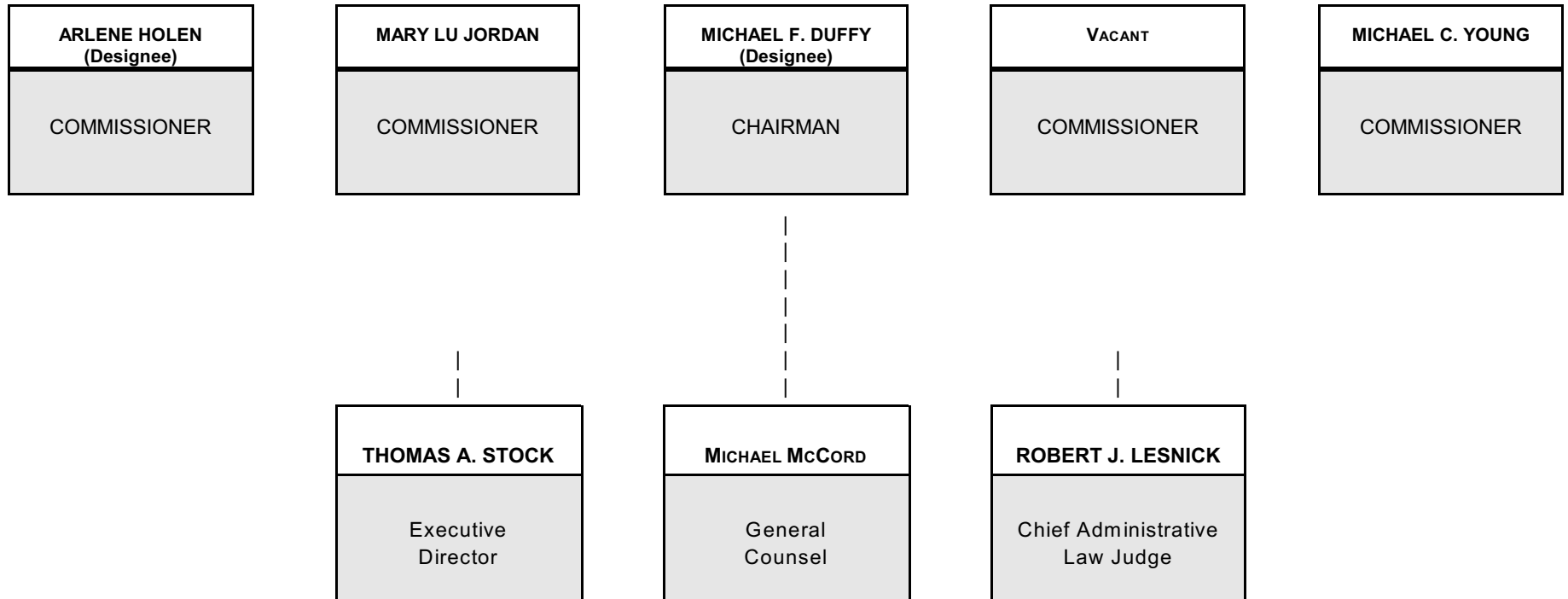
For FY 2007, new case intake is expected to remain at 3,400, including a substantial number of accident response plan disputes which will require immediate attention. As a result, the FY 2007 end-of-year inventory of undecided cases is expected to swell to 3,756 cases.

For FY 2008, the Commission anticipates a slowing of new case filings to a rate of 3,000 per year. With the increased resources included in this budget case dispositions should increase to 3,000 holding the end-of-year inventory of undecided cases at the FY 2007 level projected level of 3756.

At the appellate level, the workload is expected to remain consistent with 86 new cases anticipated for FY 2008, with dispositions of 87 resulting in an end-of-year inventory of 12 undecided cases.

In addition to conducting its appellate responsibilities, the Commission expects to finalize its procedural rules for resolving disputes under the MINER Act during FY 07.

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
ORGANIZATIONAL CHART
KEY PERSONNEL**



FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Mine Safety and Health Review Commission (30 U.S.C. 801, et. seq.), \$8,096,000

Explanation of Language

Note: A regular 2007 appropriation for this account had not been enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P. L. 109-289, Division B, as amended). The amounts included for 2007 in this budget reflect the levels provided by the continuing resolution.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

	FY 2007	FY 2008
<hr/>		
<u>Authorizing Legislation</u>		
<u>Containing Indefinite Authority</u>		
 Federal Mine Safety and Health Amendments Act of 1977, as amended (30 U.S.C. 823-824)	 7,731,000	 8,096,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2006</u>		<u>FY 2007 Est.</u>		<u>FY 2008</u>		<u>Increase over FY 2007 Est.</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Commission Review	24	4,619,340	27	4,619,000	27	4,696,000	--	+77,000
Administrative Law Judge Determinations	<u>17</u>	<u>3,111,570</u>	<u>17</u>	<u>3,112,000</u>	<u>21</u>	<u>3,400,000</u>	<u>+4</u>	<u>+288,000</u>
Total BA	41	7,730,910	44	7,731,000	48	8,096,000	+4	+365,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2007	FY 2008	Net Change
Appropriations	\$7,731,000	\$8,096,000	+365,000
Full-time Equivalent	44	48	+4

Explanation of Changes	FTE	Budget Authority
Increases		
Increased FTE	+4	+288,000
Maintain Base Staff	—	+77,000
Decreases		
Net Change	+4	+365,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS
(in thousands of dollars)

	<u>Actual</u> <u>FY 2006</u>	<u>Estimate</u> <u>FY 2007</u>	<u>Estimate</u> <u>FY 2008</u>	Increase or Decrease over 2007 Est.
<u>Personnel Compensation</u>				
Full-time permanent	4,297	4,210	4,546	+336
Other than full-time permanent	<u>290</u>	<u>304</u>	<u>311</u>	<u>+7</u>
Total, personnel compensation	4,587	4,514	4,857	+343
Personnel benefits, civilian	945	985	1,031	+46
Benefits former personnel	—	—	—	—
Travel and transportation of persons	100	100	98	-2
Transportation of things	2	2	2	—
Rental Payments to GSA	1,217	1,250	1,248	-2
Communications, utilities and miscellaneous charges	115	115	112	-3
Printing and reproduction	35	35	34	-1
Other services	585	585	572	-13
Supplies and materials	80	80	78	-2
Equipment	<u>65</u>	<u>65</u>	<u>64</u>	<u>-1</u>
TOTAL	7,731	7,731	8,096	+365

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2006 ACTUAL	2007 ESTIMATE	2008 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES	2	2	2
AL-2	1	1	1
AL-3	8	8	8
SUBTOTAL	9	9	9
GS-15	4	4	4
GS-14	2	2	3
GS-13	3	3	2
GS-12	3	3	3
GS-11	2	2	6
GS-9	2	2	2
GS-8	8	8	7
GS-6	1	1	1
SUBTOTAL	25	25	28
Total Permanent Full-time Positions	41	41	48
Unfilled positions end-of-year	6	—	—
Total, full-time permanent employment end-of-year	35	41	48
Full-time equivalent (FTE) usage	41	44	48

Average ES salary	\$138,008	\$141,044	\$145,416
Average AL level	2.89	2.89	2.90
Average AL salary	\$152,000	\$155,344	\$160,160
Average GS grade	10.92	10.92	10.83
Average GS salary	\$72,873	\$74,476	\$71,114

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2006		FY 2007		FY 2008	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	41	7,730,910	44	7,731,000	48	8,096,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
APPROPRIATIONS HISTORY TABLE

Fiscal Year	Budget Estimate To Congress	House Allowance	Senate Allowance	Appropriation
1986	3,709,000	3,815,000	3,815,000	3,651,000 ¹
1987	3,919,000	3,651,000	3,919,000	3,785,000
1988	4,139,000	4,080,000	4,080,000	3,892,000 ²
1989	4,079,000	4,079,000	4,079,000	4,030,000 ³
1990	4,005,000	4,030,000	4,030,000	4,030,000
1991	4,292,000	4,292,000	4,292,000	4,188,509 ⁴
1992	4,719,000	4,357,000	4,357,000	5,143,000
1993	5,830,000	5,772,000	5,772,000	5,726,000 ⁵
1994	5,842,000	5,842,000	5,842,000	5,842,000
1995	6,237,000	6,200,000	6,200,000	6,189,000 ⁶
1996	6,467,000	6,467,000	6,200,000	6,184,000 ⁷
1997	6,332,000	6,060,000	6,060,000	6,049,000 ⁸
1998	6,060,000	6,060,000	6,060,000	6,060,000
1999	6,060,000	6,060,000	6,060,000	6,060,000
2000	6,159,000	6,060,000	6,159,000	6,136,000 ⁹
2001	6,320,000	6,200,000	6,320,000	6,320,000
2002	6,939,000	6,939,000	6,939,000	6,934,000 ¹⁰
2003	7,127,000	—	—	7,131,343 ¹¹
2004	7,774,000	7,774,000	7,774,000	7,728,133 ¹²
2005	7,813,000	7,813,000	7,813,000	7,809,024 ¹³
2006	7,809,000	7,809,000	7,809,000	7,730,910 ¹⁴
2007	7,576,000	7,731,000	7,731,000	7,731,000 ¹⁵
2008	8,096,000			

- ¹ Reflects reduction of \$164,000 pursuant to P.L. 99-177.
- ² Reflects reduction of \$14,000 pursuant to Sec. 512 of P.L. 100-202.
- ³ Reflects reduction of \$49,000 pursuant to Sec. 517 of P.L. 100-436.
- ⁴ Reflects reduction of \$103,437 pursuant to Sec. 514(b) of P.L. 101-517 and \$54 pursuant to P.L. 99-177.
- ⁵ Reflects reduction of \$46,000 pursuant to Sec. 511 of P.L. 102-394.
- ⁶ Reflects reduction of \$11,000 pursuant to Sec. 2007 of P.L. 104-19.
- ⁷ Reflects reduction of \$9,000 pursuant to Sec. 513 and \$7,000 pursuant to Sec. 31002 of P.L. 104-134
- ⁸ Reflects reduction of \$11,000 pursuant to Sec. 519 of P.L. 104-208
- ⁹ Reflects reduction of \$23,000 pursuant to the Consolidated Appropriations Act for 2000, P.L. 106-113.
- ¹⁰ Reflects reduction of \$5,000 pursuant to Section 1403 of P.L. 107-206.
- ¹¹ Reflects adjustments pursuant to the Omnibus Appropriations Act, P.L. 108-7.
- ¹² Reflects reduction of \$45,867 pursuant to the Consolidated Appropriations Act, P.L. 108-199.
- ¹³ Reflects a congressional add-on of \$59,000 and a reduction of \$62,976 pursuant to section 122(a) of Public Law 108-447.
- ¹⁴ Reflects reduction of \$78,090 pursuant to Title III, Chapter 8, of the Department of Defense Appropriations Act, P.L. 109-148.
- ¹⁵ Committee Recommendations.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1986	47
1987	51
1988	52
1989	51
1990	48
1991	47
1992	56
1993	53
1994	53
1995	55
1996	52
1997	50
1998	47
1999	45
2000	43
2001	42
2002	38
2003	35
2004	40
2005	40
2006	41
2007 Est.	44
2008 Est.	48

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

There were no Congressional Directives for the Federal Mine Safety and Health Review Commission for FY 2006 or FY 2007.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2007 Estimate		2008 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	27	4,619,000	27	4,696,000	--	+77,000
Administrative Law Judge Determinations	17	3,112,000	21	3,400,000	+4	+288,000
Total Budget Authority	44	7,731,000	48	8,096,000	+4	+365,000

GENERAL STATEMENT

The Federal Mine Safety and Health Review Commission was established as an independent agency by Section 113(a) of the Federal Mine Safety and Health Act of 1977, as amended. It is not part of the Department of Labor nor its Mine Safety and Health Administration (MSHA).

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor, including hearing miners' complaints challenging unlawful health or safety-related discrimination, and resolving compensation issues for miners idled due to mine closure orders issued by MSHA. The Commission's ALJs hear and decide cases at the trial level initiated by the Secretary of Labor, mine operators, miners, and miners' representatives.

The 5-member Commission hears appeals from ALJ decisions. The Commission may review these decisions by granting a petition for discretionary review from one or more of the parties or by directing review on its own motion.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION REVIEW

	<u>2006</u>		<u>2007</u>		<u>2008</u>		<u>Increase or Decrease</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Commission Review, Total Budget Authority	24	4,619,340	27	4,619,000	27	4,696,000	—	+77,000

Introduction:

The responsibility for the review of ALJ decisions is set forth in section 113(d)(1) of the Act. The Act states that an ALJ's decision shall become final 40 days after its issuance, unless within that period any two Commissioners direct that the decision be reviewed.

Most cases come before the Commission when two or more Commissioners vote to grant a petition for discretionary review filed by a party adversely affected or aggrieved by the ALJ's decision. Petitioners may include miners, miners' representatives, mine operators or the Secretary of Labor. The Commission is also charged with the responsibility of reviewing disputes arising over the accident response plans of underground coal operators pursuant to the Mine Improvement and New Emergency Response Act of (MINER Act) 2006, P.L. 109-236. Two or more Commissioners may also direct any case for review *sua sponte* (on the Commission's own motion, without the parties filing a petition). *Sua sponte* review is limited to ALJ decisions that are contrary to law or Commission policy, or that present a novel question of policy. By law, a quorum of three Commissioners is required to consider and decide cases appealed from the Commission's ALJs. Many of the Commission's cases present issues of first impression under the Mine Act. That is, the cases raise issues that have not been resolved by prior decisions of the Commission or the courts or the cases involve the interpretation of safety and health standards and regulations newly promulgated by MSHA.

2008 Budget Request:

The Commission is requesting a budget of \$4,696,000 and 27 FTE for its appellate review activities in FY 2008. This is an increase of \$77,000 over the amount estimated to be available for FY 2007. The request includes funding of a projected 3.1 pay increase in January 08, and other costs of Commission operations.

A total of 86 new cases are anticipated for review by the Commission during FY 2008. Eighty-six dispositions are expected resulting in an end-of-year inventory of 12 undecided cases.

The Commission's FY 2008 budget includes the following performance objectives:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2008:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ All Commission cases will be decided within 18 months of receipt.
- ◆ The average age of substantive decisions will be maintained at 12 months or less.

Objective 2 — Issue well-reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues

Quality Indicators for FY 2008:

- ◆ Track Commission decisions that are appealed to the Courts of Appeals.

Fiscal Year 2007 Activity:

The FY 2007 resource level for the Commission Review Activity is \$4,619,000 and 27 FTE. The Commission began FY 2007 with an inventory of 12 undecided cases and anticipates receiving 86 new cases during the year. Eighty-six dispositions are anticipated during FY 2007, resulting in 12 undecided cases remaining at the end of the fiscal year.

During the last quarter of BY 2006, the Commission issued a permanent rule implementing its responsibilities under the Mine Improvement and New Emergency Responder Act of 2006 (MINER Act). Interim procedural rules were issued on July 2006 at which time members of the interested public were invited to submit comments to assist the Commission in its deliberations regarding adoption of a permanent rule.

The Commission's Budget includes the following objectives for its appellate activity in FY 2007:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2007:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ All Commission undecided cases currently in excess of 18 months of receipt will be decided.
- ◆ All Commission remaining cases will be decided within 18 months of receipt.
- ◆ Reduce the average age of substantive decisions to 12 months or less.

Objective 2 – Commission's rules

Performance Goals for FY 2007:

- ◆ Complete MINER Act rulemaking by March 31, 2007.

Objective 3 — Issue well-reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues.

Quality Indicators for FY 2007:

- ◆ Track Commission decisions that are appealed to the Courts of Appeals.

Fiscal Year 2006 Activity:

The FY 2006 resource level for the Commission Review Activity was \$4,619,340 with actual employment of 24 FTE. The Commission began FY 2005 with an inventory of 14 undecided cases and 81 new cases are anticipated for the year. Eighty-three cases are expected to be decided, resulting in a docket of 12 undecided cases at the end of the fiscal year.

Of the 83 cases expected to be decided in FY 2006, 11 were substantive decisions, 69 were procedural orders, and 3 were denials of petitions for review. The average age of the 12 matters pending on the Commission's docket as of September 30, 2006 was 3.4 months, and the average age of the 11 substantive decisions issued in FY 2006 is expected to be 15.5 months.

During FY 2006, the Commission completed with the August 4, 2006 publication of a final rule, revising many of its procedural rules, the regulations implementing the Equal Access to Justice Act, and the Privacy Act. This rule making process began with the October 27, 2004, advance notice of public rulemaking and included participation from the mining and legal communities, and interested individuals for the general public.

The Commission also issued on July 18, 2006, an interim procedural rule implementing the Mine Improvement and New Emergency Response Act of 2006 outlining its procedures in resolving disputes arising between operators and the Secretary of Labor over the contents of accident response plans for underground coal miners. Although the interim rule became effective upon publication, the Commission invited public comments in order to assist in its deliberations regarding the adoption of a permanent rule.

The Commission developed the following performance objectives associated with its FY 2006 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2006:

- ◆ All Commission cases will be assigned when briefing is completed

Accomplishments: This goal was met. All cases that were briefed were assigned.

- ◆ The Commission will have decided all cases that are 18 months or older.

Accomplishments: This goal was met. Through September 30, 2006, the 5 undecided cases that reached 18 months or older were decided.

- ◆ The average age of substantive decisions will be maintained at 12 months or less.

Accomplishments: This goal was not met. As of September 30, 2006, the average age of the substantive dispositions is expected to be 15.5 months. The Commission could not meet this goal due to the majority of its substantive case dispositions being more than 12 months old.

Objective 2 — Commission Rules

Performance Goals for FY 2005

- ◆ Complete the rulemaking BY September 30, 2006.

Accomplishments: This goal was met. The Commission published a final rule on August 4, 2006, the rule revising many of its procedural rules, the regulations implementing the Equal Access to Justice Act and the Privacy Act will take effect October 3, 2006 and will apply to cases initiated after that date as well as most

pending proceedings.

Objective 3 — Issue well-reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues.

Quality Indicators for FY 2006:

- ◆ Track Commission decisions that are appealed to the Courts of Appeals.

Accomplishments: During FY 2006, 2 cases were appealed to the Courts of Appeals. The Court of Appeals decided 3 cases in FY 2005. The Court affirmed the Commission in 1 case and reversed the Commission in 2 cases. As of September 30, 2006, 2 cases remained pending.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>		<u>FY 2007</u>	<u>FY 2008</u>
	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Goal</u>	<u>Actual</u>	<u>Goal</u>	<u>Goal</u>
OBJECTIVE: Issue opinions in a timely manner									
Undecided cases over 24 months of age	1	0	1	1	0	0	0	0	0
▲ Undecided cases over 18 months of age (inclusive)	1	2	2	1	3	0	1	0	0
Undecided cases over 12 months of age (inclusive)	6	3	7	6	4	0	1	0	0
▲ Cases briefed but unassigned	3	0	0	0	0	0	0	0	0
▲ Substantive disposition age	16.4	12.2	12.5	18.6	13.1	12.0	15.5	12.0	12.0

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2006</u>		<u>2007</u>		<u>2008</u>		<u>Increase or Decrease</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Administrative Law Judge Determinations	17	3,11,570	17	3,112,000	21	3,400,000	4	+288,000

Introduction:

The Commission employs administrative law judges to hear and decide contested cases at the trial level, as initiated by the Secretary of Labor, mine operators, and miners or their representatives. The judges are also responsible for evaluating and approving or denying settlement agreements under the Mine Act.

Administrative law judges travel to hearing sites located at or near the mine involved in order to afford mine operators, miners and their representatives the full opportunity to participate in the hearing process.

2008 Budget Request:

The budget request contains \$3,400,000 and 21 FTE for the Commission's trial activities of its administrative law judges in FY 2008.

The request includes an increase of \$288,000 for 4 additional personnel, and funding of a projected 3.1 percent pay increase in January 08 and other costs of Commission operations.

The additional staff increase includes four law clerks. The Commission believes that the request of law clerks is an efficient and economical approach for assisting the judges in deciding the increased caseload on its trial docket, the use of law clerks will provide the Commission with the added flexibility to make staffing adjustments consistent with case filings and undecided case inventories.

A total of 3,000 new cases are anticipated for FY 2008, with an equal number of dispositions being projected for the year. The end of year inventory of undecided cases is estimated to be 3,756.

The Commission believes that the number of new case filings will decrease in FY 2008 as more operators gain experience under the MINER Act and as precedence setting decisions of the Commission are implemented. However, a high level of new case filing experienced in FY 2006, and anticipated in FY 2007 and FY 2008 are expected to continue as a result of the Secretary of Labor's increased enforcement and prosecutory efforts.

The Commission's FY 2008 budget includes the following performance objectives:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2008:

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the time frames in the Commission's procedural rules.
- ◆ Issue 90 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 95 percent of settlement decisions within 30 days of receipt of settlement motions.

- ◆ Decide 90 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 195 days from receipt by the Commission.

Objective 2 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2008:

- ◆ Track appeal rate and affirmance rate of substantive ALJ decisions.

Fiscal Year 2007 Activity:

The FY 2007 resource level for the Administrative Law Judge Determination Activity is expected to be \$3,112,000 and 17 FTE.

The Commission estimates to begin FY 2007 with an inventory of 2,756 undecided trial cases. A total of 3,400 new cases is anticipated for FY 2007, with 2,400 dispositions projected, leaving an end-of-year inventory of 3,756 cases.

The Commission's budget includes the following objectives for its trial activity in FY 2007:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2007

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the time frames in the Commission's procedural rules.
- ◆ Issue 90 percent of decisions within 90 days of receipt of the post-hearing brief.
- ◆ Issue 95 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 90 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 195 days from receipt by the Commission.

Objective 2 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2007:

- ◆ Track appeal rate and affirmance rate of substantive ALJ decisions.

Fiscal Year 2006 Activity:

The FY 2006 funding level for the Administrative Law Judge Determinations Activity is \$3,111,570 with actual employment of 17 FTE. As of October 1, 2005, the Commission's ALJs had an inventory of 1,589 with 3,406 new cases expected to be received during the year. Case dispositions for the year were 2,239, resulting in an end-of-year inventory of 2,756 undecided cases. The number of new trial cases received are 40 percent higher than FY 2005 and were received at a rate not experienced in the past 10 years. As a result, the inventory of undecided cases as of September 30, 2006 represents a workload of 15 months.

The Commission developed the following performance objectives associated with its FY 2006 budget. These objectives and accomplishments during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2006:

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the time frames in the Commission's procedural rules.

Accomplishments: This goal is being met. The average time for a case to be assigned to an ALJ was 61 days. Penalty cases are being assigned in 78 days, less than the 85-day goal and the timeframe specified in the Commission's rules. Review cases are being assigned in 24 days, well within the 30-day goal.

- ◆ Issue 92 percent of decisions involving hearings within 90 days of receipt of post-hearing brief.

Accomplishments: This goal is not being met. Through August 31, of the 87 decisions issued after hearings, 88 percent were issued within 90 days of receipt of the post-hearing brief.

- ◆ Issue 96 percent of settlement dispositions within 30 days of receipt of settlement motion.

Accomplishments: This goal is being met. Through August 31, of the 1,261 settlement motions that were approved during this year, 96 percent were approved within 30 days of receipt of the settlement motion.

- ◆ Decide 95 percent of cases within 270 days of assignment.

Accomplishments: This goal is being met. Through August 31, of the 2,010 cases that were disposed, 98 percent were disposed within 270 days of assignment to an ALJ.

- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

Accomplishments: Data on this performance goal is currently not available.

Objective 2 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2007:

- ◆ Track appeal rate and affirmance rate of substantive ALJ decisions.

Accomplishments: Since the beginning of FY 1998, the Commission has calculated appeal and affirmance rates of its trial decisions. During FY 2005, Commission judges issued 87 decisions after hearings. Ten decisions were appealed to the Commission for an appeal rate of 11 percent. Of the nine substantive decisions issued by the Commission, one upheld the judge decision. Three cases were affirmed in part and reversed in part. Four cases were remanded to the judge for further proceedings and one case was dismissed.

**PERFORMANCE MEASUREMENT MATRIX
OFFICE OF ADMINISTRATIVE LAW JUDGES**

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006		FY 2007	FY 2008
	Actual	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER									
▲ Average time (days) for assignment of penalty cases	69	80	80	81	73	<85	78	<85	<85
▲ Average time (days) for assignment of review cases	22	28	26	35	27	<30	24	<30	<30
Average time (days) for assignment of all cases	60	71	71	70	61	71	53	71	71
▲ Percentage of decisions issued within 90 days of post-hearing brief	92%	61%	88%	85%	96%	92%	88%	90%	90%
▲ Percentage of settlement approvals issued within 30 days of settlement motion	98%	96%	93%	86%	90%	96%	96%	95%	95%
Average time (days), case assignment to disposition	70	74	63	53	62	63	62	93	93
▲ Average time (days), case receipt to disposition	131	145	134	123	121	145	NA	195	195
▲ Cases decided within 270 days of assignment	97%	94%	98%	98%	97%	95%	98%	90%	90
Undecided cases over 270 days of age	48	25	83	1	18	0	5	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS									
▲ Appeal rate	20%	17%	28%	16%	10%	N/A	11%	N/A	N/A
▲ Affirmance rate	64%	55%	80%	43%	43%	N/A	25%	N/A	N/A

Information on performance measurement is currently not available.

▲Current performance goals or quality indicators

AGENCY-WIDE MANAGEMENT OBJECTIVES
MANAGEMENT OBJECTIVES

The Commission's management goal is to manage its human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, as they relate to the fiscal years covered by the FY 2008 budget submission are as follows:

Objective 1 — Ensure Organizational and Management Effectiveness

Performance Goals:

- ◆ Provide efficient and effective administrative management and support services

The Commission obtains many of the services required as an independent agency from other Federal agencies. Payroll services are provided by the Department of Agriculture. Personnel and accounting services and website hosting are contracted through the Bureau of Public Debt (BPD). The Commission also uses the Department of Treasury developed Gov Trip as its E-Travel program. The franchise agency also perform similar services to other government organizations thus providing the Commission with economies that could not be independently achieved. A further advantage is that the Commission receives the benefit of system enhancements required by new laws and can more effectively participate in the President's Management Agenda.

The Accountability of Tax Dollars Act requires that the Commission's financial statements be audited annually. The Commission utilized audit specifications and negotiated audit contracts developed by BPD for all the organizations it services. The Commission received a "clean" audit report for FY 2005. Auditing of the Commission's FY 06 records is currently in process.

- ◆ Evaluate Program Effectiveness

The Commission will continue to review its Strategic Plan to assure that its resources effectively address its statutory requirements and constituent needs.

Performance plans are evaluated annually to assure that goals and objectives fairly and accurately report accomplishments. Commission goals and objectives are included in individual performance standards upon which employees are evaluated. Interaction during evaluations provide an excellent method to further improve performance and gain greater efficiency.

Objective 2 — Provide Effective Information Technology Systems

Performance Goals:

- ◆ Maintain and enhance secure electronic information systems for case management, legal research, management operations support, and public access of data through the Internet.

The Commission has one staff member devoted full time to information technology and operation of its network.

The Commission continues to devote a major portion of its information technology efforts to network security with the constant threat from hackers, spammers, and viruses. Upgraded security software and patches were installed as they were released. Anti-virus scans are conducted daily on servers and individual workstations. Those security efforts will continue throughout fiscal years 2007 and 2008.

The Commission's website, <http://www.fmshrc.gov> recorded 39,000 visits in July 2006. The website includes information about the Commission, its rules, guides and publications, strategic and performance plans, GILS records, a database of Commission and ALJ published decisions, transcripts of oral arguments, and links to related agencies and legal materials, including the Mine Act and MSHA. Constituents are promptly informed of ALJ and Commission's decisions through prompt posting on the Commission's website and can listen to audio recordings of its Commission meetings and oral arguments.

Objective 3 — Sustain a High Performing Workforce

Performance Goals:

- ◆ Recruit, train, and retain a diverse workforce of skilled, highly motivated employees to effectively and efficiently accomplish the Commission's mission.

The Commission evaluated all vacant positions to assure that any added staff represents the best use of the Commission's limited FTE resources and can be fully funded within available resources.

During FY 2006, Congress passed the MINER Act which added an additional responsibility to the Commission of deciding disputes involving accident response plans for underground coal mines. Although no cases have been received to date, a substantial number of disputes are anticipated and must be acted upon immediately. In addition, the number of new case filings from MSHA enforcement actions have increased 40 percent and are expected to continue at a higher than normal level during the period covered by this budget request.

For FY 2008, the Commission is requesting 4 additional FTE to cope with the burgeoning increase of undecided trial cases. Rather than substantially increase its corps of administrative law judges, the Commission believes that it can more effectively and economically increase the case dispositions through the employment of law clerks. This approach will also allow the Commission to effect staffing adjustments as the backlog of undecided cases is reduced.

Currently, the Commission has three Commissioners to hear and decide cases at the appellate level. An additional Commissioner nominee is pending before the Senate and the fifth position is vacant. These vacancies and supporting staff and associated funding is being held in abeyance pending confirmation.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2006 Actual	2007 Estimate	2008 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	14	12	12
New cases received	81	86	86
Total case workload	95	98	98
Cases decided	83	86	86
Cases pending end of year	12	12	12

Administrative Law Judge Determinations

Cases pending beginning of year	1,589	2,756	3,756
New cases received	3,406	3,400	3,000
Total case workload	4,995	6,156	6,756
Cases decided	2,239	2,400	3,000
Cases pending end of year	2,756	3,756	3,756

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Michael F. Duffy, Chairman Designee	August 30, 2012
Arlene Holen, Designee	August 30, 2012
Mary Lu Jordan	August 30, 2008
Michael G. Young	August 30, 2008

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2006 and has no plans to employ consultants in FY 2007 or FY 2008.